

REMARKS

Claims 2-15 & 18-21 are pending in the subject application. Applicant requests reconsideration and allowance of the subject patent application in light of the remarks that follow.¹

The pending claims were rejected under 35 U.S.C. § 103(a) as allegedly not being patentable over U.S. Patent Application Publication No. 2002/0070953 by *Barg et al.* (“*Barg*”) in view of TARGIT Analysis 2K3 Technical White Paper, Ver. 1.2, July 2003 (“the TARGIT reference”). Applicant respectfully traverses the rejection under § 103 in view of the two Declarations Under 37 C.F.R. §1.131, submitted herewith establishing that the relevant portions of the TARGIT reference are the Applicant’s own work.²

The Declaration Pursuant to 37 C.F.R. 1.131 by Joanne Ibsen states that she is the sole author of TARGIT reference and that she obtained the information contained in the TARGIT reference from the Applicant, Morten Middelfart. The attached Declaration by Joanne Ibsen is not executed. The undersigned has been informed that Joanne Ibsen mailed an executed copy of this paper directly to the Examiner by regular mail on or before November 2, 2010.

The Declaration Pursuant to 37 C.F.R. 1.131 by the Applicant, Morten Middelfart states that the author of the TARGIT reference is Joanne Ibsen and that the TARGIT reference is based entirely on the information that the Applicant provided to her.

The Declarations submitted herewith disqualify the TARGIT reference as prior art. Accordingly, claims 2-15 & 18-21, which were rejected under § 103 based on the TARGIT

¹ The Office Action contains statements characterizing the claims and related art. Regardless of whether any such statements are specifically addressed herein, Applicant's silence as to these characterizations should not be construed as acceptance of them.

² Applicant’s disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982). A 35 U.S.C. § 102(e) reference can be overcome by antedating the filing date of the reference by submitting an affidavit or

reference, are allowable. Allowance of the pending claims is, therefore, respectfully requested.

If additional fees are required for any reason, please charge Deposit Account No. 02-4800 the necessary amount.

Respectfully submitted,

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declaration under 37 CFR § 1.131 establishing that the relevant disclosure is applicant's own work. *In re Mathews*, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969).